

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 12-20428

Clemon Phillips,

Honorable Sean F. Cox

Defendants.

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**ORDER DENYING DEFENDANT'S MOTION FOR FREE TRANSCRIPTS**

Petitioner Clemon Phillips pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). This Court sentenced Defendant on January 11, 2013. Defendant did not file a direct appeal.

Currently before the Court is Defendant's *pro se* Motion for Free "Plea Hearing and/or Sentencing Hearing" Transcripts, which was filed on October 30, 2013. (Doc. #19). In this motion, Defendant asks the Court to provide various transcripts to Defendant, at no cost to him, pursuant to 28 U.S.C. § 753(f).

Section 753(f) provides that fees for transcripts furnished in proceedings brought under § 2255 shall be paid for by the Government "if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." 28 U.S.C. § 753(f). In *United States v. MacCollom*, 426 U.S. 317 (1976), the Supreme Court construed this statute as requiring a criminal defendant to file a nonfrivolous section 2255 motion as a prerequisite to the ability to seek a free transcript.

Here, Defendant has not filed a § 2255 motion. Thus, under *MacCollom*, Defendant's

request for a free transcript is premature. Defendant must first file an actual § 2255 motion before the Court can consider any request for a free transcript. *MacCollom, supra*; *see also United States v. Alcorn*, 10 Fed.Appx. 248 (6th Cir. 2001) (“the district court properly denied [defendant’s] motion because [defendant] simply does not have a right to a transcript at government expense under 28 U.S.C. § 753(f) in order to search the transcript for yet unasserted grounds in a motion to vacate his sentence under 28 U.S.C. § 2255.”).

Accordingly, **IT IS ORDERED** that Defendant’s request for transcripts at the Government’s expense is **DENIED AS PREMATURE**.

Defendant’s Motion for a Decision On Defendant’s Motion Pertaining to Sentencing and Plea Transcripts (Doc. #20) is **DENIED AS MOOT**.

**IT IS SO ORDERED.**

Dated: February 28, 2014

s/ Sean F. Cox  
Sean F. Cox  
U. S. District Court Judge

I hereby certify that on February 28, 2014, the foregoing document was served upon counsel of record by electronic means and upon Clemon Phillips by First Class Mail at the address below:

Clemon Phillips  
47347039  
Mckean Federal Correctional Institution  
Inmate Mail/parcels  
P.O. Box 8000  
Bradford, PA 16701

Dated: February 28, 2014

s/ J. McCoy  
Case Manager